

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THE STATE OF OHIO, ex rel. DAVE YOST,
OHIO ATTORNEY GENERAL,

and

THE UNITED STATES OF AMERICA,

Plaintiffs,

v.

NORFOLK SOUTHERN RAILWAY COMPANY
and NORFOLK SOUTHERN CORPORATION,

Defendants/Third-
Party Plaintiffs,

v.

OXY VINYLs LP, GATX CORPORATION,
GENERAL AMERICAN MARKS COMPANY,
TRINITY INDUSTRIES LEASING COMPANY,
SMBC RAIL SERVICES LLC, DOW CHEMICAL
INCORPORATED, and UNION TANK CAR
COMPANY,

Third-Party
Defendants.

Civil Action No. 4:23CV517

4:23CV675

Hon. John R. Adams

JOINT STATUS REPORT

1. Pursuant to Federal Rule of Civil Procedure 26(f) and LR 16.3(b)(3), and in accordance with the Court's instructions at the May 8, 2023 status conference, the parties submit the following status report and specific discovery plan:

2. **Status Update**

(a) The parties have met and conferred numerous times since the Court's May 8, 2023 status conference, both by email and telephone.

(b) As a result of these meetings, the parties submitted two stipulated proposed orders—a Discovery Order and a Protective Order—both of which were entered by the Court. ECF Nos. 27, 30.

(c) On June 16, 2023, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively “Norfolk Southern”) filed Answers to Ohio’s Complaint, *see* ECF No. 29, and the United States of America’s Amended Complaint, *see* ECF No. 28.

(d) On June 30, 2023, Norfolk Southern filed a Third-Party Complaint against Oxy Vinyls LP, GATX Corporation, General American Marks Company, Trinity Industries Leasing Company, SMBC Rail Services LLC, Dow Chemical Incorporated, and Union Tank Car Company. ECF No. 31. Norfolk Southern is currently in the process of serving the summonses on the Third-Party Defendants.

(e) On July 7, 2023, the United States filed a motion to strike certain of Norfolk Southern’s affirmative defenses. ECF No. 34. Under the Court’s default rules, Norfolk Southern’s response is due on August 7, 2023, and the United States’s reply is due on August 21, 2023. *See* LR 7.1.

(f) The parties are filing their initial disclosures concurrently with this status report.

(g) In the class action concerning the February 3, 2023 derailment, *In re East Palestine Train Derailment*, No. 4:23-cv-242, Judge Pearson entered a Case Management Plan on June 28, 2023. ECF No. 98, Case No. 4:23-cv-242 (N.D. Oh.). Among other things, the Court ordered the parties to complete Fact Discovery by January 5, 2024; submit expert reports by April 1, 2024; submit opposing expert reports by May 3, 2024; and conduct expert depositions by July 1, 2024.

3. **Specific Discovery Plan**

(a) As detailed in the parties' May 5, 2023 discovery plan, the parties propose that Fact Discovery conclude on August 16, 2024. *See* ECF No. 18 at 3. In addition, per the Court's stipulated Discovery Order, each party must seek leave of court to depose more than 15 witnesses from another party; in other words, the United States and the State of Ohio may take 15 depositions of Norfolk Southern each, and Norfolk Southern may take 15 depositions of the United States and 15 depositions of the State of Ohio. *See* ECF No. 27 at 23. The Discovery Order does not address discovery with respect to the Third Party Defendants. The parties expect to meet and confer with the Third Party Defendants regarding reasonable and appropriate discovery limitations after they have been served.

(b) The parties have identified the following individuals as potential early deponents:

(i) **Norfolk Southern**

1. Peggy Clark – Columbiana County EMA
2. Trent Conaway – EP Mayor
3. Ralph Dollhopf – US EPA
4. Keith Drabick – EP Fire Chief
5. Mike Eberle – OH EPA
6. Rick Hackley - US EPA
7. Rich Henry – US EPA
8. James Justice – US EPA
9. Jack Kelly – US EPA
10. Michelle Kerr – US EPA
11. Amy Klei – OH EPA
12. Kurt Kollar – OH EPA
13. Andy McGuire – US EPA
14. Paul Ruesch – US EPA
15. Anne Vogel – OH EPA

(ii) **The State of Ohio**

1. Robert Wood – Norfolk Southern
2. Scott Deutsch – Norfolk Southern
3. Jared Hopewell – Norfolk Southern
4. Keith Drabick – EP Fire Chief
5. Trent Conaway – EP Mayor
6. Peggy Clark – Columbiana County EMA

7. Charles Day – Specialized Response Solutions
8. Drew McCarty – Specialized Professional Services, Inc.
9. Steve Smith – OxyVinyls
10. Paul Thomas – OxyVinyls

(iii) The United States

1. Robert Wood – Norfolk Southern
2. Daniel Hunt – Norfolk Southern
3. Robert Scoble – Norfolk Southern
4. Jon Rettig – Norfolk Southern
5. Scott Deutsch – Norfolk Southern
6. Steven Aufdenkampe – Norfolk Southern
7. Drew McCarty – Specialized Professional Services, Inc.

(c) The parties agree to the following schedule for coordinated service of, and responses to, initial written discovery:

(i) Initial requests for production, interrogatories, and requests for admission may be served following the July 26, 2023 case management conference and on or before September 15, 2023, with responses due 60 days after service.

(ii) The parties are free to serve additional discovery requests, within the limits set by the Discovery Order, after December 15, 2023.

(iii) The parties will confer with Third Party Defendants regarding timing for initial written discovery and depositions after service of the summonses, once counsel for the Third Party Defendants has been determined.

(d) Depositions may begin on October 2, 2023 and may continue concurrently with written discovery. To the extent a deponent overlaps with a deponent in *In re East Palestine Train Derailment*, Case No. 4:23-cv-242 (N.D. Oh.), the parties will endeavor to conduct both depositions on two consecutive days whenever reasonable.¹

¹ This paragraph does not waive the United States' rights under 40 CFR § 2.404, or other similar *Touhy* regulations (*United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)), to object to any demand for oral testimony made in *In re East Palestine Train Derailment*, Case No. 4:23-cv-242 (N.D. Oh.), or move to quash any subpoena accompanying a demand for oral testimony issued in that case.

(e) The parties request that the Court set a further status conference on or about January 16, 2024.

(f) The parties recommend the following schedule for Expert Discovery, as set forth in the parties' May 5, 2023 discovery plan, ECF No. 18 at 3-4:

(i) Norfolk Southern proposes expert report deadlines as follows:

Simultaneous Exchange of Initial Expert Report(s): September 16, 2024

Simultaneous Exchange of Rebuttal Expert Report(s): November 18, 2024

(ii) The United States and Ohio propose expert report deadlines as follows:

Plaintiffs' Initial Expert Report(s) Due: September 16, 2024

Defendants' Reply Expert Report(s) Due: October 16, 2024

Plaintiffs' Rebuttal Expert Report(s) Due: November 18, 2024

(iii) The parties jointly propose an Expert Deposition and Expert Discovery Completion Date of February 17, 2025.

(g) The parties propose a deadline to file dispositive motions of April 17, 2025 (two months after their proposed Expert Discovery Completion Date).

Date: July 12, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2023, I caused a copy of the foregoing to be filed with the Clerk of the Court using the Court's CM/ECF electronic filing system, which will provide electronic notice to all counsel of record.

/s/ Davina Pujari

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